99TH CONGRESS *2d Session* } HOUSE OF REPRESENTATIVES { REPT. 99-526 Part 2

RETIREMENT EQUITY TECHNICAL CORRECTIONS ACT OF 1986

APRIL 18, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2110 which, on April 18, 1986, was referred jointly to the Committee on Education and Labor and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2110) to make technical corrections related to the Retirement Equity Act of 1984, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Retirement Equity Technical Corrections Act of 1986".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 2. TECHNICAL CORRECTIONS TO THE RETIREMENT EQUITY ACT OF 1984.

(a) AMENDMENTS RELATED TO SECTIONS 102 AND 202 OF THE ACT.—

(1) TREATMENT OF CLASS-YEAR PLANS.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (4) of section 411(d) (relating to class-year plans) is amended to read as follows:

"(4) CLASS-YEAR PLANS.—

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"(A) In general.—The requirements of subsection (a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

"(B) 5-year break in service.—For purposes of subparagraph (A) if—

"(i) any contributions are made on behalf of a participant with respect to any plan year, and

"(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any right to or derived from the contributions made with respect to such plan year.

"(C) Class-year plan.—For purposes of this section, the term 'class-year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year."

(B) Amendment of erisa.—Paragraph (3) of section 203(c) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(3)(A) The requirements of subsection (a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

"(B) For purposes of subparagraph (A) if—

"(i) any contributions are made on behalf of a participant with respect to any plan year, and

"(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any right to or derived from the contributions made with respect to such plan year.

"(C) For purposes of this part, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year."

(C) Effective date.—The amendments made by this paragraph shall apply to contributions made for plan years beginning after the date of the enactment of this Act; except that, in the case of a plan described in section 302(b) of the Retirement Equity Act of 1984, such amendments shall not apply to any plan year to which the amendments made by such Act do not apply by reason of such section 302(b).

(2) Rules relating to lump sum treatment.—Subsection (e) of section 402 (relating to tax on lump sum distributions) is amended by adding at the end thereof the following new paragraph:

"(6) Treatment of potential future vesting.—

"(A) In general.—For purposes of determining whether any distribution which becomes payable to the recipient on account of the employee's separation from service is a lump sum distribution, the balance to the credit of the employee shall be determined without regard to any increase in vesting which may occur if the employee is re-employed by the employer.

"(B) Recapture in certain cases.—If—

"(i) an amount is treated as a lump sum distribution by reason of subparagraph (A),

"(ii) special lump sum treatment applies to such distribution,

"(iii) the employee is subsequently re-employed by the employer; and

"(iv) as a result of services performed after being so re-employed, there is an increase in the employee's vesting for benefits accrued before the separation referred to in subparagraph (A),

under regulations prescribed by the Secretary, the tax imposed by this chapter for the taxable year (in which the increase in vesting first occurs) shall be increased by the reduction in tax which resulted from the special lump sum treatment (and any election under paragraph (4)(B) shall not be taken into account for purposes of determining whether the employee may make another election under paragraph (4)(B)).

"(C) Special lump sum treatment.—For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

"(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

"(ii) is treated as long-term capital gain under subsection (a)(2) of this section or section 403(a)(2).

"(D) Vesting.—For purposes of this paragraph the term 'vesting' means the portion of the accrued benefits derived from employer contributions to which the participant has a nonforfeitable right."

(3) Rules relating to rollovers.—Paragraph (6) of section 402(a) (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(G) Treatment of potential future vesting.—

"(i) In general.—For purposes of paragraph (5), in determining whether any portion of a distribution on account of the employee's separation from service may be transferred in a transfer to which paragraph (5)(A) applies, the balance to the credit of the employee shall be determined without regard to any increase in vesting which may occur if the employee is re-employed by the employer.

"(ii) Treatment of subsequent distributions.—If—

"(I) any portion of a distribution is transferred in a transfer to which paragraph (5)(A) applies by reason of clause (i),

"(II) the employee is subsequently re-employed by the employer, and

"(III) as a result of service performed after being so re-employed, there is an increase in the employee's vesting for benefits accrued before the separation referred to in clause (i),

then the provisions of paragraph (5)(D)(iii) shall apply to any distribution from the plan after the distribution referred to in clause (i). The preceding sentence shall not apply if the distribution referred to in subclause (I) is made without the consent of the participant."

(4) Treatment of withdrawal of mandatory contributions.—

(A) Amendments of internal revenue code.—

(i) Clause (ii) of section 411(a)(3)(D) is amended by striking out the last sentence and inserting in lieu thereof the following: "The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal."

(ii) Subparagraph (C) of section 411(a)(7) is amended by striking out the last sentence and inserting in lieu thereof the following:

"The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal."

(B) Amendments of ERISA.—

(i) Clause (ii) of section 203(a)(3)(D) of the Employee Retirement Income Security Act of 1974 is amended by striking out the last sentence and inserting in lieu thereof the following: "The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal."

(ii) Subsection (e) of section 204 of the Employee Retirement Income Security Act of 1974 is amended by striking out the last sentence and inserting in lieu thereof the following:

"The plan provision required under this subsection may provide that such repayment must be made (A) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (B) in the case of any other withdrawal, 5 years after the date of the withdrawal."

(5) PARTICIPATION REQUIREMENTS UNDER SIMPLIFIED EMPLOYEE PENSIONS.—Subparagraph (A) of section 408(k)(2) (relating to participation requirements) is amended by striking out "age 25" and inserting in lieu thereof "age 21".

(b) AMENDMENTS RELATED TO SECTIONS 103 AND 203 OF THE ACT.—

(1) CLARIFICATION OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITY IN CASE OF TERMINATED VESTED PARTICIPANT.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (1) of section 417(c) (defining qualified preretirement survivor annuity) is amended by adding at the end thereof the following new sentence:

"In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply."

(B) AMENDMENT OF ERISA.—Paragraph (1) of section 205(e) of the Employee Retirement Income Security Act of 1974 (defining qualified preretirement survivor annuity) is amended by adding at the end thereof the following new sentence:

"In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply."

(2) CLARIFICATION OF TRANSFEREE PLAN RULES.—

(A) AMENDMENTS OF INTERNAL REVENUE CODE.—

(i) Subclause (III) of section 401(a)(11)(B)(iii) (relating to plans to which requirements of joint and survivor annuity and preretirement survivor annuity apply) is amended by striking out "indirect transferee" and inserting in lieu thereof "indirect transferee (in a transfer after December 31, 1984)".

(ii) Subparagraph (B) of section 401(a)(11) is amended by adding at the end thereof the following new sentence:

"Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom."

(B) AMENDMENTS OF ERISA.—

(i) Clause (iii) of section 205(b)(1)(C) of the Employee Retirement Income Security Act of 1974 is amended by striking out "a transferee" and inserting in lieu thereof "a direct or indirect transferee (in a transfer after December 31, 1984)".

(ii) Paragraph (1) of section 205(b) of such Act is amended by adding at the end thereof the following new sentence:

"Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom."

(3) CLARIFICATION OF COORDINATION BETWEEN QUALIFIED JOINT AND SURVIVOR ANNUITY AND QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Clause (i) of section 401(a)(11)(A) is amended by striking out "who retires under the plan" and inserting in lieu thereof "who does not die before the annuity starting date".

(B) AMENDMENT OF ERISA.—Paragraph (1) of section 205(a) of the Employee Retirement Income Security Act of 1974 is amended by striking out "who retires under the plan" and inserting in lieu thereof "who does not die before the annuity starting date".

(4) REQUIREMENT OF SPOUSAL CONSENT FOR USING PLAN ASSETS AS SECURITY FOR LOANS.—

(A) AMENDMENTS OF INTERNAL REVENUE CODE.—

(i) Subparagraph (B) of section 417(a)(1) is amended by striking out "paragraphs (2) and (3)" and inserting in lieu thereof "paragraphs (2), (3), and (4)".

(ii) Subsection (a) of section 417 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) REQUIREMENT OF SPOUSAL CONSENT FOR USING PLAN ASSETS AS SECURITY FOR LOANS.—Each plan shall provide that, if section 401(a)(11) applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

"(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

"(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent."

(iii) Subsection (f) of section 417 is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) DISTRIBUTIONS BY REASON OF SECURITY INTERESTS.—If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (a)(4), nothing in this section or section 411(a)(11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan."

(B) AMENDMENT OF ERISA.—

(i) Subparagraph (B) of section 205(c)(1) of the Employee Retirement Income Security Act of 1974 is amended by striking out "paragraphs (2) and (3)" and inserting in lieu thereof "paragraphs (2), (3), and (4)".

(ii) Subsection (c) of section 205 of such Act is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

"(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

"(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent."

(iii) Section 205 of such Act is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4), nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan."

(C) EFFECTIVE DATES.—

(i) The amendments made by this paragraph shall apply with respect to loans made after August 18, 1985.

(ii) In the case of any loan which was made on or before August 18, 1985, and which is secured by a portion of the participant's accrued benefit, nothing in the amendments made by sections 103 and 203 of the Retirement Equity Act of 1984 shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(iii) For purposes of this subparagraph, any loan which is revised, extended, renewed, or renegotiated after August 18, 1985, shall be treated as made after August 18, 1985.

(5) CLARIFICATION OF NOTICE REQUIREMENT FOR INDIVIDUALS WHO BECOME PARTICIPANTS AFTER AGE 35, ETC.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subparagraph (B) of section 417(a)(3) (relating to plan to provide written explanations) is amended to read as follows:

"(B) EXPLANATION OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

"(i) IN GENERAL.—Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

"(ii) APPLICABLE PERIOD.—For purposes of clause (i), the term 'applicable period' means, with respect to a participant, whichever of the following periods ends last:

"(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

"(II) A reasonable period after the individual becomes a participant.

"(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

"(IV) A reasonable period ending after section 401(a)(11) applies to the participant."

(B) AMENDMENT OF ERISA.—Subparagraph (B) of section 205(c)(3) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(B)(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

"(ii) For purposes of clause (i), the term 'applicable period' means, with respect to a participant, whichever of the following periods ends last:

"(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

"(II) A reasonable period after the individual becomes a participant.

"(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

"(IV) A reasonable period ending after section 401(a)(11) applies to the participant."

(6) SPOUSAL CONSENT FOR CHANGES IN DESIGNATIONS.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subparagraph (A) of section 417(a)(2) (relating to requirement that spouse consent to election) is amended to read as follows:

"(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or".

(B) AMENDMENT OF ERISA.—Subparagraph (A) of section 205(c)(2) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or".

(7) CLARIFICATION OF NONFORFEITABLE ACCRUED BENEFIT.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Subclause (I) of section 401(a)(11)(B)(iii) is amended by striking out "the participant's nonforfeitable accrued benefit" and inserting in lieu thereof "the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant)".

(B) AMENDMENT OF ERISA.—Subparagraph (C) of section 205(b)(1) of the Employee Retirement Income Security Act of 1974 is amended by striking out "the participant's nonforfeitable accrued benefit" and inserting in lieu thereof "the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant)".

(8) CLARIFICATION OF DEFINITION OF VESTED PARTICIPANT.—

(A) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (1) of section 417(f) (defining vested participant) is amended by striking out "the accrued benefit derived from employer contributions" and inserting in lieu thereof "such participant's accrued benefit".

(B) Amendment of erisa.—Paragraph (1) of section 205(h) of the Employee Retirement Income Security Act of 1974 is amended by striking out "the accrued benefit derived from employer contributions" and inserting in lieu thereof "such participant's accrued benefit".

(9) Clarification of qualified preretirement survivor annuity.—

(A) Amendments of internal revenue code.—

(i) Paragraph (2) of section 417(c) (defining qualified preretirement survivor annuity) is amended by striking out "the account balance of the participant as of the date of death" and inserting in lieu thereof "the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a))".

(ii) Subsection (c) of section 417 (defining qualified preretirement survivor annuity) is amended by adding at the end thereof the following new paragraph:

"(3) Security interests taken into account.—For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity."

(B) Amendments of erisa.—

(i) Paragraph (2) of section 205(e) of the Employee Retirement Income Security Act of 1974 is amended by striking out "the account balance of the participant as of the date of death" and inserting in lieu thereof "the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable accrued benefit".

(ii) Subsection (e) of section 205 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity."

(10) Clarification of requirements for spousal consent.—

(A) Amendment of internal revenue code.—Subsection (f) of section 417 (as amended by paragraph (4)) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) Requirements for certain spousal consents.—No consent of a spouse shall be effective for purposes of subsection (e)(1) or (e)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a)(1)(A) are met."

(B) Amendment to erisa.—Section 205 of the Employee Retirement Income Security Act of 1974 (as amended by paragraph (4)) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) are met."

(11) Clarification of rule for subsidized plans.—

(A) Amendment of internal revenue code.—Subparagraph (A) of section 417(a)(5) (as redesignated by paragraph (4)(A)) is amended by striking out "if the plan" and inserting in lieu thereof "if such benefit may not be waived (or another beneficiary selected) and if the plan".

(B) Amendment to erisa.—Subparagraph (A) of section 205(c)(5) of the Employee Retirement Income Security Act of 1974 (as redesignated by paragraph (4)(B)) is amended by striking out "if the plan" and inserting in lieu thereof "if such benefit may not be waived (or another beneficiary selected) and if the plan".

(12) Clarification of annuity starting date.—

(A) Amendment of internal revenue code.—Paragraph (2) of section 417(f) (defining annuity starting date) is amended to read as follows:

"(2) Annuity starting date.—

"(A) In general.—The term 'annuity starting date' means—

"(i) the first day of the first period for which an amount is to be received as an annuity, or "(ii) in the case of a benefit not payable in the form of an annuity, the day on which such benefit is to be paid.

"(B) SPECIAL RULE FOR DISABILITY BENEFITS.—For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit."

(B) AMENDMENT TO ERISA.—Paragraph (2) of section 205(h) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(2)(A) The term 'annuity starting date' means—

"(i) the first day of the first period for which an amount is to be received as an annuity, or

"(ii) in the case of a benefit not payable in the form of an annuity, the day on which such benefit is to be paid.

"(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit."

(13) CLARIFICATION OF PLANS TO WHICH REQUIREMENTS APPLY.—

(A) AMENDMENT TO INTERNAL REVENUE CODE.—Subclause (I) of section 401(a)(11)(B)(iii) is amended by striking out "section 417(a)(2)(A)" and inserting in lieu thereof "section 417(a)(2)".

(B) AMENDMENT TO ERISA.—Clause (i) of section 205(b)(1)(C) of the Employee Retirement Income Security Act of 1974 is amended by striking out "subsection (c)(2)(A)" and inserting in lieu thereof "subsection (c)(2)".

(14) CLERICAL AMENDMENTS.—

(A) Paragraph (1) of section 417(a) is amended by striking out "section 401(a)(ii)" and inserting in lieu thereof "section 401(a)(11)".

(B) Paragraph (1) of section 417(c) is amended by striking out "survivor annuity or the life of" in the matter preceding subparagraph (A) and inserting in lieu thereof "survivor annuity for the life of".

(C) Subparagraph (B) of section 415(b)(2) is amended by striking out "as defined in section 401(a)(11)(G)(iii)" and inserting in lieu thereof "as defined in section 417".

(c) AMENDMENTS RELATED TO SECTIONS 104 AND 204 OF THE ACT.—

(1) TREATMENT OF QUALIFIED DOMESTIC RELATIONS ORDERS FOR INDIVIDUALS OTHER THAN SPOUSE OR FORMER SPOUSE.—

(A) IN GENERAL.—Paragraph (9) of section 402(a) (relating to alternate payee under qualified domestic relations order treated as distributee) is amended by striking out "the alternate payee shall be treated" and inserting in lieu thereof "any alternate payee who is the spouse or former spouse of the participant shall be treated".

(B) CONFORMING AMENDMENT.—Section 72(m)(10) (relating to determination of investment in the contract in the case of qualified domestic relations orders) is amended by inserting "who is the spouse or former spouse of the participant" after "alternate payee".

(2) PROCEDURES FOR PERIOD DURING WHICH DETERMINATION BEING MADE.—

(A) AMENDMENTS OF THE INTERNAL REVENUE CODE.—

(i) Subparagraph (A) Of section 414(p)(7) (relating to procedures for period during which determination is being made) is amended by striking out "shall segregate in a separate account in the plan or in an escrow account the amounts" and inserting in lieu thereof "shall separately account for the amounts (hereinafter in this paragraph referred to as the 'segregated amounts')".

(ii) Subparagraph (B) of section 414(p)(7) (relating to payment to alternate payee if order is determined to be qualified domestic relations order) is amended—

(I) by striking out "18 months" and inserting in lieu thereof "the 18-month period described in subparagraph (E)", and

(II) by striking out "plus any interest" and inserting in lieu thereof "including any interest".

(iii) Subparagraph (C) of section 414(p)(7) is amended—

(I) by striking out "18 months" and inserting in lieu thereof "the 18-month period described in subparagraph (E)", and

(II) by striking out "plus any interest" and inserting in lieu thereof "including any interest".

(iv) Subparagraph (D) of section 414(p)(7) is amended by striking out "the 18-month period" and inserting in lieu thereof "the 18-month period described in subparagraph (E)".

(v) Paragraph (7) of section 414(p) is amended by adding at the end thereof the following new subparagraph:

"(E) Determination of 18-month period.—For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order."

(B) Amendments of erisa.—

(i) Clause (i) of section 206(d)(3)(H) of the Employee Retirement Income Security Act of 1974 is amended by striking out "shall segregate in a separate account in the plan or in an escrow account the amounts" and inserting in lieu thereof "shall separately account for the amounts (hereinafter in this subparagraph referred to as the 'segregated amounts')".

(ii) Clause (ii) of section 206(d)(3)(H) of such Act is amended—

(I) by striking out "18 months" and inserting in lieu thereof "the 18-month period described in clause (v)", and

(II) by striking out "plus any interest" and inserting in lieu thereof "including any interest".

(iii) Clause (iii) of section 206(d)(3)(H) of such Act is amended—

(I) by striking out "18 months" and inserting in lieu thereof "the 18-month period described in clause (v)", and

(II) by striking out "plus any interest" and inserting in lieu thereof "including any interest".

(iv) Clause (iv) of section 206(d)(3)(H) of such Act is amended by striking out "the 18-month period" and inserting in lieu thereof "the 18-month period described in clause (v)".

(v) Subparagraph (H) of section 206(d)(3) of such Act is amended by adding at the end thereof the following new clause:

"(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order."

(3) Coordination with qualified plan requirements.—Section 401 is amended by redesignating the subsection relating to cross references as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) Coordination With Qualified Domestic Relations Orders.—The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter."

(4) Clarification of application of domestic relation provisions.—

(A) Amendment of internal revenue code.—Subsection (p) of section 414 is amended by redesignating paragraph (9) as paragraph (11) and by inserting after paragraph (8) the following new paragraph:

"(9) Subsection not to apply to plans to which section 401(a)(13) does not apply.—This subsection shall not apply to any plan to which section 401(a)(13) does not apply."

(B) Amendment of ERISA.—Paragraph (3) of section 206(d) of the Employee Retirement Income Security Act of 1974 is amended by redesignating subparagraph (L) as subparagraph (N) and by inserting after subparagraph (K) the following new subparagraph:

"(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply."

(5) Benefit payments made in accordance with qualified domestic relations orders not treated as garnishments for purposes of consumer credit protection act.—Paragraph (3) of section 206(d) of the Employee Retirement Income Security Act of 1974 (as amended by paragraph (4)(B)) is further amended by inserting after subparagraph (L) the following new subparagraph:

"(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 303(a) of the Consumer Credit Protection Act.".

(6) Treatment of certain spouses.—

(A) Amendment of the internal revenue code.—Subparagraph (A) of section 414(p)(5) (relating to treatment of former spouse as surviving spouse for purposes of determining surviver benefits) is amended by striking out "sections 401(a)(11) and 417" and inserting in lieu thereof "sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)".

(B) AMENDMENT OF ERISA.—Clause (i) of section 206(d)(3)(F) of the Employee Retirement Income Security Act of 1974 is amended by striking out "section 205" and inserting in lieu thereof "section 205 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)".

(7) CLERICAL AMENDMENTS.—

(A) AMENDMENTS OF INTERNAL REVENUE CODE.—

(i) Subparagraph (F) of section 402(a)(6) is amended by striking out "paragraph (5)(A)" and inserting in lieu thereof "paragraph (5)".

(ii) Clause (i) of section 414(p)(1)(B) is amended by striking out "to a spouse," and inserting in lieu thereof "to a spouse, former spouse,".

(iii) Clause (i) of section 414(p)(6)(A) is amended by striking out "any other alternate payee" and inserting in lieu thereof "each alternate payee".

(iv) Subparagraph (B) of section 414(p)(5) is amended by striking out "the surviving spouse" and inserting in lieu thereof "the surviving former spouse".

(v) Subsection (p) of section 414 is amended by striking out the last sentence of paragraph (5) and by inserting after paragraph (9) the following new paragraph:

"(10) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—With respect to the requirements of subsections (a) and (k) of section 401 and section 409(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order."

(B) AMENDMENTS OF ERISA.—

(i) Clause (ii) of section 206(d)(3)(F) of the Employee Retirement Income Security Act of 1974 is amended by striking out "the former spouse" and inserting in lieu thereof "the surviving former spouse".

(ii) Subclause (I) of section 206(d)(3)(G)(i) of such Act is amended by striking out "any other alternate payee" and inserting in lieu thereof "each alternate payee".

(d) AMENDMENTS RELATED TO SECTION 207 OF THE ACT.—

(1) Paragraph (1) of section 402(f) (relating to written explanation to recipients of distributions eligible for rollover treatment) is amended by striking out "qualifying rollover distribution" and inserting in lieu thereof "eligible rollover distribution".

(2) Paragraph (2) of section 402(f) is amended to read as follows:

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) ELIGIBLE ROLLOVER DISTRIBUTION.—The term 'eligible rollover distribution' means any distribution any portion of which may be excluded from gross income under subsection (a)(5) of this section or subsection (a)(4) of section 403 if transferred to an eligible retirement plan in accordance with the requirements of such subsection.

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' has the meaning given such term by subsection (a)(5)(E)(iv)."

(e) AMENDMENT RELATED TO SECTION 301 OF THE ACT.—Paragraph (1) of section 204(g) of the Employee Retirement Income Security Act of 1974 is amended by striking out "section 302(c)(8)" and inserting in lieu thereof "section 302(c)(8) or 4281".

(f) AMENDMENTS RELATED TO SECTION 303 OF THE ACT.—

(1) Subsection (c) of section 303 of the Retirement Equity Act of 1984 (relating to transitional rule for requirement of joint and survivor annuity and preretirement survivor annuity) is amended by adding at the end thereof the following new paragraph:

"(4) ELIMINATION OF DOUBLE DEATH BENEFITS.—

"(A) IN GENERAL.—In the case of a participant described in paragraph (2), death benefits (other than a qualified joint and survivor annuity or a qualified preretirement survivor annuity) payable to any beneficiary shall be reduced by the amount payable to the surviving spouse of such participant by reason of paragraph (2). The reduction under the preceding sentence shall be made on the basis of the respective present values (as of the date of the participant's death) of such death benefits and the amount so payable to the surviving spouse.

"(B) SPOUSE MAY WAIVE PROVISIONS OF PARAGRAPH (2).—In the case of any participant described in paragraph (2), the surviving spouse of such participant may waive the provisions of paragraph (2). Such waiver shall be made on or before the close of the second plan year to which the amendments made by section 103 of this Act apply. Such a waiver shall not be treated as a transfer of property for purposes of chapter 12 of the Internal Revenue Code of 1954 and shall not be treated as an assignment or alienation for purposes of section 401(a)(13) of the Internal Revenue Code of 1954 or section 206(d) of the Employee Retirement Income Security Act of 1974."

(2) Subparagraph (A) of section 303(e)(2) of the Retirement Equity Act of 1984 (relating to treatment of certain participants who perform services on or after January 1, 1976) is amended by striking out "in the first plan year" and inserting in lieu thereof "in any plan year".

(g) TECHNICAL AMENDMENT TO SECTION 408(d) OF ERISA.—

(1) Subsection (d) of section 408 of the Employee Retirement Income Security Act of 1974 is amended by striking out "(a),".

(2) The amendment made by paragraph (1) shall apply to transactions after the date of the enactment of this Act.

(h) EFFECTIVE DATE.—Except as otherwise provided in subsections (a)(1)(C), (b)(4)(C), and (g)(2), any amendment made by this section shall take effect as if included in the provision of the Retirement Equity Act of 1984 to which such amendment relates.

I. SYNOPSIS

As amended and reported by the Committee on Education and Labor, H.R. 2110 makes technical and clarifying changes to the Retirement Equity Act of 1984 (hereinafter referred to as REA or the Act) and a miscellaneous amendment to Title I of the Employee Retirement Income Security Act of 1974 (ERISA).

The technical changes to REA address the following areas: (1) minimum participation, vesting, and benefit accrual standards, (2) survivor benefit requirements, (3) qualified domestic relations orders, (4) notice of rollover treatment, and (5) transition rules.

The ERISA amendment deals with the treatment of loans to owner-employees.

II. BACKGROUND AND REASONS FOR THE BILL

The Retirement Equity Act of 1984 (P.L. 98-397) was enacted on August 23, 1984. It amended both ERISA and the Internal Revenue Code to improve the delivery of retirement benefits and provide for greater equity under private pension plans for workers, their spouses, and their dependents. It accomplished those goals primarily through three types of Changes: (1) revision of minimum participation, vesting, and benefit accrual standards, (2) expansion of the survivor benefit requirements, and (3) clarification of the responsibility of plan administrators to honor qualified domestic relations orders issued under State law.

Since the enactment of REA, the Committee has become aware of certain problems with respect to the operation of some of the provisions of the Act. On April 18, 1985, H.R. 2110, a bill to make technical corrections to REA, was introduced by Representative Dan Rostenkowski, Chairman of the Committee on Ways and Means, Representative John Duncan, Ranking Member of the Committee on Ways and Means, Representative William Clay, Chairman of the Subcommittee on Labor-Management Relations, Committee on Education and Labor, and Representative Marge Roukema, Ranking Member of the Subcommittee. H.R. 2110 was jointly referred to the Committees on Education and Labor and Ways and Means.

On May 16, 1985, the Subcommittee on Labor-Management Relations requested written comments for the record on H.R. 2110.

On April 10, 1986, the full Committee discharged the Subcommittee on Labor-Management Relations from further consideration of the bill. It then adopted by voice vote an amendment in the nature of a substitute for H.R. 2110 offered by Representative Clay and ordered the bill, as amended, to be reported.

III. Requirements of Rules of House and Cost Estimates

A. OVERSIGHT STATEMENT

In compliance with clause (2)(l)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee states that no findings or recommendations of the Committee on Government Operations were submitted to the Committee with respect to matters covered by H.R. 2110, as amended.

B. INFLATIONARY IMPACT STATEMENT

Pursuant to clause (2)(l)(4), Rule XI of the Rules of the House of Representatives, the Committee states that the enactment of H.R. 2110, as amended, is not expected to have any impact on prices and costs in the operation of the national economy.

C. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee agrees with the following cost estimate submitted by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC.

Hon. Augustus Hawkins,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: In accordance with Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 2110, Relating to Technical Changes to the Retirement Equity Act of 1984, as ordered reported by the Committee on Education and Labor on April 10, 1986. The bill would clarify the applicability of provisions in the Retirement Equity Act of 1984 concerning (1) qualifications for participation and vesting, (2) survivor benefits, (3) qualified domestic relations orders, (4) notice of rollover treatment, and (5) effective dates. The bill also amends the Employee Retirement Income Security Act to allow plan loans to owner-employees if a waiver is granted by the Department of Labor.

CBO concurs with the estimates of the revenue effects of H.R. 2110 prepared by the Joint Committee on Taxation. The bill would decrease revenues by less than $5 million annually for fiscal years 2987 through 1991.

With best wishes,
Sincerely,

Rudolph G. Penner, *Director.*

IV. SECTION BY SECTION ANALYSIS; EXPLANATION OF THE BILL

A. Minimum Participation, Vesting, and Benefit Accrual Standards (sec. 2(a) of the Bill, Sec. 203(c) of ERISA, and Secs. 402 and 411 of the Code) [4]

If a pension, profit-sharing, or stock bonus plan qualifies under the tax law (Code sec. 401(a)), then special tax treatment is accorded. With respect to such a qualified plan (1) a trust under the plan generally is exempt from Federal income tax, (2) employers are generally allowed deductions (within limits) for plan contributions for the year for which the contributions are made, even though participants are not taxed on plan benefits until the benefits are distributed, (3) benefits distributed as a lump-sum distribution may be accorded special long-term capital gain or 10-year income averaging treatment, and (4) certain plan distributions may be rolled over, tax-free, to an individual retirement arrangement (IRA) or to another qualified plan.

Under a pension plan (including a profit-sharing or stock bonus plan), benefits are provided to plan participants under formulas that determine the benefit a participant may earn, the portion of that benefit that has been earned, and the portion of the earned benefit that is nonforfeitable. Accordingly, such plans provide rules for determining whether an employee is a plan participant (the participation rules), for determining the portion of the benefit that has been earned (the benefit accrual rules), and for determining the nonforfeitable percentage of a participant's accrued benefit (the vesting schedule).

Under present law, a pension plan plan must satisfy certain minimum standards relating to (1) the conditions under which employees may be excluded from plan participation, (2) the rate at which plan benefits are accrued, and (3) the rate at which benefits become nonforfeitable. The participation standards limit exclusions based on the age and number of years of service completed by an employee.[5] The benefit accrual standards are based on the number of years of plan participation. The vesting standard generally is based on the number of years of service with the employer completed by the employee.

1. BREAK-IN-SERVICE RULES

Present Law

In general

All years of service with the employer maintaining a pension plan are taken into account for purposes of determining (1) an employee's eligibility to participate in the plan, and (2) the portion of a participant's accrued benefit that is vested. No credit need be provided, however, for periods during which an employee is considered to have a break in service. In some cases, an employee who returns to work for an employer after a break in service may lose credit for service earned prior to break in service.

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[4] References to ERISA mean the Employee Retirement Income Security Act of 1974, and references to the Code mean the Internal Revenue Code of 1954.

[5] In addition, the Code provides participation rules for qualified plans. These rules are designed to require that qualified plans provide participation to a broad cross-section of employees.

Under REA, in the case of a nonvested participant, years of service completed with the employer or employers maintaining the plan before any period of consecutive one-year breaks in service are required to be taken into account after a break in service, unless the number of consecutive one-year breaks in service equals or exceeds the greater of (1) five years, or (2) the aggregate number of years of service before the consecutive one-year breaks in service.

In addition, in the case of a participant in a defined contribution plan or in a defined benefit pension plan funded solely by certain insurance contracts, years of service after a break in service are not counted for purposes of determining the vested percentage of the participant's accrued benefit derived from employer contributions before the break in service, if the participant incurs at least five consecutive one-year breaks in service.

Class-year vesting

In a class-year plan, employees' rights to benefits attributable to contributions made on their behalf with respect to any plan year are required to be nonforfeitable not later than the close of the fifth plan year following the plan year for which the contributions were made. A class-year plan is a profit-sharing, stock bonus, or money purchase pension plan that provides for the separate vesting of employee's rights to employer contributions with respect to each plan year.

Under REA, the application of the expanded break-in-service rules to class-year plans was not explicitly stated.

Lump-sum distributions

REA did not explicitly conform the expanded break-in-service rules with the rules relating to the taxation of lump-sum distributions. If an employee separates from service and receives a distribution prior to the time at which the employee incurs five consecutive one-year breaks in service, the potential increase in vesting that might occur if the employee returned to service may make the distribution ineligible for special 10-year income averaging tax treatment (Code sec. 402(e)).[6]

Rollovers.—A similar problem may occur if an employee separates from service and rolls over to an IRA or to another qualified plan a lump-sum distribution representing 100 percent of the employee's partially vested accrued benefit. If the employee returns to service with the employer before incurring five consecutive one-year breaks in service, then the employee's prior rollover contribution may be treated as failing to meet the rollover requirements (Code sec. 402(a)(5)).

Elapsed time method of crediting service.—Under present law[7] an alternative method of crediting service is provided under which an employer's rights with respect to plan participation, vesting, and benefit accrual are not based on the actual completion of a specified number of hours of service. This elapsed time method of crediting service is designed to lessen the administrative burdens of recordkeeping.

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[6] See generally, Temp. Treas. Reg. sec. 11.401(e)(4)(A)-1(a).

[7] Treas. Reg. sec. 1.410(a)-7.

Treasury regulations[8] have provided some guidance relating to the application of the maternity and paternity leave provisions of REA to plans using the elapsed time method, but the regulations did not address the application of the break-in-service rules of REA to plans using the elapsed time method.

Explanation of Provision

Class-year vesting

The bill generally conforms the break-in-service rules applicable to class-year plans to the break-in-service rules provided for other types of plans. Under the bill, a class-year plan generally is to provide that 100 percent of each participating employee's right to benefits derived from employer contributions for a plan year (the contribution year) is to be nonforfeitable as of the close of the fifth plan year of service (whether or not consecutive) with the employer following the contribution year. A plan year is a plan year of service with the employer if the participant has not separated from service with the employer as of the close of the year.

The bill provides that, if a participant incurs five consecutive one-year breaks in service before the completion of five plan years of service with respect to a contribution year, then the plan may provide that the participant forfeits any right to or derived from the employer contributions for the contribution year.

The provision is effective for contributions made for plan years beginning after the date of enactment, except that the provision is not effective with respect to a collectively bargained plan until the applicable effective date of the Act for that plan.

Lump-sum distributions

The bill conforms the rules relating to the taxation of lumpsum distributions to the break-in-service rules. Under the bill, in determining whether any distribution payable on account of separation from service is a lump sum distribution, the balance to the credit of the employee is determined without taking into account any increase in vesting that could occur if the employee is reemployed by the employer.

Under the bill, however, if the employee is reemployed by the employer before the occurrence of five consecutive one-year breaks in service and the nonforfeitable interest of the employee in the amount of the pre-break accrued benefit is thereby increased, then the reduction in tax attributable to the treatment of the distribution as a lump-sum distribution is to be recaptured as provided by Treasury regulations. Such a reduction in tax could occur on account of an election to use 10-year forward averaging with respect to a lump-sum distribution, the special treatment of net unrealized appreciation of employer securities (Code sec. 402(e)(4)(J)), or long-term capital gains treatment for a portion of a lump-sum distribution. In addition, if such a recapture is made, the participant's previous lump sum distribution election is not taken into account in determining whether the employee is eligible to make another election.

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[8] Temp. Treas. Reg. sec. 1.410(a)-7T.

Rollovers

The bill provides that, in determining whether a distribution to an employee on account of separation from service is eligible to be rolled over to another plan or to an IRA, the balance to the credit of the employee is determined without regard to any increased vesting that may occur if the employee returns to service with the employer. However, if (1) the employee excluded the distribution from income on account of a rollover, (2) the employee returns to service with the employer before incurring five consecutive one-year breaks in service and, (3) the vested percentage of benefits accrued before the separation from service is increased, then any subsequent distributions to the employee from the plan in which the increased vesting occurs are not eligible for 10-year income averaging or capital gains treatment.

The rule denying eligibility for 10-year forward averaging or capital gains treatment on subsequent distributions does not apply if the distribution that was rolled over was made without the consent of the participant (e.g., the amount distributed did not exceed $3,500).

Elapsed time method of crediting service

The committee directs the Treasury Department to provide, within a reasonable period of time after the date of enactment, additional guidance to taxpayers on the application of the break in service rules to plans that use the elapsed time method of crediting service. It is not intended that such guidance is to be limited to the issuance of regulations

2. MANDATORY EMPLOYEE CONTRIBUTIONS

Present Law

Under present law, a right to an accrued benefit derived from employer contributions under a pension plan is not treated as forfeitable merely because the plan provides that, in the case of a participant who is not at least 50 percent vested in the accrued benefits derived from employer contributions, the accrued benefit may be forfeited if the employee withdraws any portion of the mandatory contributions. Mandatory employee contributions mean amounts contributed to the plan by the employee that are required (1) as a condition of employment, (2) as a condition of participation in the plan, or (3) as a condition of obtaining benefits under the plan attributable to employer contributions.

The rule permitting the forfeiture of certain employer contributions does not apply unless the plan provides that any accrued benefit forfeited is restored upon repayment by the participant of the amount of mandatory contributions withdrawn. In the case of a defined contribution plan, the plan may provide that such repayment must be made before the participant has a single one-year break in service after the withdrawal.

A similar rule permits certain service to be disregarded if attributable to amounts distributed to the employee on account of a separation from service. This rule applies for purposes of determining the period of an employee's service in calculating accrued benefits under a plan, but does not permit prior service to be disregarded until the employee has at least five consecutive one-year breaks in service.

Explanation of Provision

The bill conforms the rule relating to the period for repayment of mandatory contributions to the rule relating to the repayment of accrued benefits after separation from service and extends both rules to apply in the case of a defined benefit plan as well as a defined contribution plan. The provision clarifies that the repayment period during which a plan must permit an employee to repay mandatory contributions does not end before a participant has five consecutive one-year breaks in service.

A plan may provide that repayment of withdrawn amounts is required to be made no later than (1) five years after the date of the withdrawal or (2) in the case of a distribution on account of separation from service, the earlier of (a) five years after date the individual is reemployed by the employer or (b) the individual incurs five consecutive one-year breaks in service.

3. MAXIMUM AGE REQUIREMENT

Present Law

The Act reduced from 25 to 21 the maximum age requirement that a pension plan may impose as a condition of plan participation. Thus, under the Act, a pension plan generally may not require, as a condition of participation, completion of more than one year of service or attainment of an age greater than 21 (whichever occurs later). The Act did not lower the maximum age requirement applicable to simplified employee pensions (SEPs).

Explanation of Provision

The bill reduces from 25 to 21 the maximum age requirement that a SEP may impose as a condition of plan participation. Thus, a SEP may not require, as a condition of participation, attainment of an age greater than 21 or the performance of service during more than three of the immediately preceding five calendar years (whichever occurs later).

B. Survivor Benefit Requirements (Sec. 2(b) of the bill, Sec. 205 of ERISA, and Secs. 401 and 417 of the Code)

1. COORDINATION BETWEEN QUALIFIED JOINT AND SURVIVOR ANNUITY AND QUALIFIED PRERETIREMENT SURVIVOR ANNUITY

Present Law

A pension plan (including certain profit-sharing or stock bonus plans) is generally required to provide survivor benefits to the spouse of a plan participant who survives the participant. In the case of a participant who retires under the plan, the participant's accrued benefit is to be paid in the form of a qualified joint and survivor annuity, unless the participant and the participant's spouse (if any) waive the joint and survivor annuity in favor of another form of benefit.

Present law requires that, in the case of a vested participant who dies before the participant's annuity starting date, the participant's surviving spouse is to receive a qualified preretirement survivor annuity unless the benefit was previously waived by the participant with the spouse's consent. The participant's annuity starting date is defined as the first day of the first period for which an amount is received as an annuity, whether by reason of retirement or disability, under the plan.

It is unclear under present law which of the survivor benefit provisions (i.e., the qualified joint and survivor annuity provisions or the qualified preretirement survivor annuity provisions) apply in the case of (1) a participant who retires, or attains the normal retirement age under the plan, but dies prior to the participant's annuity starting date, and (2) a participant who receives a disability benefit under a plan.

Explanation of Provision

In general

The bill clarifies and coordinates the application of the qualified joint and survivor annuity and qualified preretirement survivor annuity provisions in the case of (1) an individual who dies before or after the annuity starting date, and (2) an individual who receives a disability benefit under a plan.

Coordination of preretirement survivor annuity and joint and survivor annuity

The bill provides that the survivor benefit payable to a participant's spouse is to be provided in the form of a qualified joint and survivor annuity if the participant does not die before the annuity starting date unless the benefit is waived in favor of another benefit and the spouse consents to the waiver. As under present law, the qualified preretirement survivor annuity rules apply in the case of a death before the annuity starting date if the preretirement survivor annuity has not been waived.

Thus, if a participant dies after separation from service or attainment of normal retirement age, but prior to the participant's annuity starting date, the survivor benefit payable to the participant's spouse is to be paid in the form of a qualified preretirement survivor benefit.

Disability benefits

The bill amends the definition of a participant's annuity starting date to exclude the commencement of disability benefits, but only if the disability benefit is an auxiliary benefit. If a participant receiving a disability benefit will, upon attainment of early or normal retirement age, receive a benefit that satisfies the accrual and vesting rules of section 411 (without taking the disability benefit payments up to that date into account), the disability benefit may be characterized as auxiliary.

For example, consider a married participant who becomes disabled at age 45 with a deferred vested accrued benefit of $100 per month commencing at age 65 in the form of a joint and survivor annuity. If the participant is entitled under the plan to a disability benefit and is also entitled to a benefit of not less than $100 per month commencing at age 65, whether or not the participant is still disabled, the payments made to the participant between ages 45 and 65 would be considered auxiliary. Thus, the participant's annuity starting date would not occur until the participant attained age 65. The participant's surviving spouse would be entitled to receive a qualified preretirement survivor annuity if the participant died before age 65, and the survivor portion of a qualified joint and survivor annuity if the participant died after age 65. The value of the qualified preretirement survivor annuity payable upon the participant's death prior to age 65 would be computed by reference to the qualified joint and survivor annuity that would have been payable had the participant survived to age 65.

If, in the above example, the participant's benefit payable at age 65 were reduced to $90 per month as a result of the disability benefits paid to the participant prior to age 65, the disability benefit would not be auxiliary. The benefit of $90 per month payable at age 65 would not, without taking into account the disability benefit payments prior to age 65, satisfy the minimum vesting and accrual rules of section 411 of the Code. Accordingly, the first day of the first period for which the disability payments were made would constitute the participant's annuity starting date, and any benefits paid to the participant would be required to be paid in the form of a qualified joint and survivor annuity (unless waived by the participant with the consent of the spouse).

2. TRANSFEREE PLAN RULES

Present Law

The provisions requiring survivor benefits generally apply to any pension plan. However, the survivor benefit requirements do not apply with respect to a participant under a profit-sharing or stock bonus plan if (1) the plan provides that the nonforfeitable accrued benefits of a deceased participant will be paid to the surviving spouse of the participant (or to another beneficiary if the surviving spouse consents or if there is no surviving spouse), (2) under a plan that provides for benefits in the form of a life annuity, the participant does not elect payment of benefits in the form of a life annuity, and (3) with respect to the participant, the plan is not a direct or indirect transferee of a plan required to provide survivor benefits.

A plan is a transferee of a plan required to provide survivor benefits if the plan (1) receives a direct transfer of assets in connection with a merger, spinoff, or conversion of a plan that is subject to the survivor benefit requirements, or (2) receives a direct transfer of assets solely with respect to the participant. Also, a plan is a transferee plan with respect to a participant if it receives amounts from a plan that is a transferee plan with respect to that participant. A plan is not a transferee plan merely because it receives rollover contributions from another plan. The transferee plan rules do not apply in the case of a rollover contribution because the consent of the participant's spouse had to be obtained in order to make the plan distribution that qualified for rollover treatment.

Explanation of Provision

The bill includes two provisions relating to the transferee plan rules. First, the bill clarifies that a plan is not to be considered a transferee plan on account of a transfer completed before January 1, 1985.

In addition, the bill clarifies that the transferee plan rule is limited to benefits attributable to the transferred assets if separate accounting is provided for the transferred assets and the allocable investment yield from those assets. Under the bill, if separate accounting is not maintained for transferred assets (and any allocable investment yield) with respect to an employee, then the survivor benefit requirements apply to all benefits payable with respect to the employee under the plan.

3. RULES RELATING TO QUALIFIED PRERETIREMENT SURVIVOR ANNUITY

Present Law

A qualified preretirement survivor annuity is defined as an annuity for the life of the surviving spouse of the participant. The amount of each payment under a qualified preretirement survivor annuity is not to be less than the payment that would have been made under a qualified joint and survivor annuity if (1) in the case of a participant who dies after attaining the earliest retirement age under the plan, the participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's death, and (2) in the case of a participant who dies on or before the earliest retirement age under the plan, the participant had separated from service on the date of death, survived until the earliest retirement age, and retired at that time with a qualified joint and survivor annuity. Under present law, the term "earliest retirement age" is defined as the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

Under a special rule for defined contribution plans that are subject to the survivor benefit requirements, the term "qualified preretirement survivor annuity" is defined as an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the account balance of the participant as of the date of death.

A plan may permit a surviving spouse to elect to have survivor benefits paid in a form other than an annuity, but only if the value of the alternative form of benefits is not less than the actuarial equivalent of the required survivor benefit.

For purposes of the survivor benefit requirements, a vested participant is any participant (whether or not still employed by the employer at the time of death) who has a nonforfeitable right to any portion of the accrued benefit under the plan derived from employer contributions.

Explanation of Provision

The bill clarifies that, in the case of a participant who separates from service prior to death, the amount of the qualified preretirement survivor annuity is to be calculated by reference to the actual date of separation from service, rather than the date of death. Thus, for purposes of calculating the qualified preretirement survivor annuity, a participant is not to be considered to accrue benefits after the date of separation from service.

The bill also clarifies that, under the special rule for defined contribution plans, a qualified preretirement survivor annuity payable to a participant's surviving spouse is required to be the actuarial equivalent of not less than 50 percent of the account balance in which the participant was vested as of the date of death. For purposes of determining who is a vested participant subject to the survivor benefit provisions, the bill provides that a participant's accrued benefit includes accrued benefits derived from employee contributions.

The committee intends that, with respect to a defined benefit or defined contribution plan, the qualified preretirement survivor annuity is to be treated as attributable to employee contributions in the same proportion which the employee contributions are to the total accrued benefit of the participant. Thus, a plan is not permitted to allocate a preretirement survivor annuity only to employee contributions.

The committee is aware that questions have arisen concerning the definition of a participant's "earliest retirement age." The committee intends that a participant's "earliest retirement age" should be determined by taking into account only the participant's actual years of service at the time of the participant's separation from service or death. Thus, in the case of a plan under which participants may not receive a benefit under the plan until the participant atains age 65, or upon attainment of age 55 and completion of 10 years of service, the earliest retirement age of a participant who died or separated from service with only 8 years of service would be age 65. On the other hand, if a participant died or separated from service after completing 10 years of service, the earliest retirement age would occur when the participant would have attained age 55 (if the participant had survived).

4. SPOUSAL CONSENT REQUIREMENTS

Present Law

Under present law, the consent of a participant's spouse is required for an election to waive the qualified joint and survivor annuity or the qualified preretirement survivor annuity. This consent is to be given in writing at the time of the participant's election, and the consent is to acknowledge the effect of the election. A consent is not valid unless it is witnessed by a plan representative or a notary public. Any consent obtained is effective only with respect to the spouse who signs it. Spousal consent to a waiver is not required if it is established to the satisfaction of a plan representative that there is no spouse because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

A spouse's consent to waive a death benefit under a profit-sharing or stock bonus plan not otherwise subject to the survivor benefit requirements is to be made in the same manner as the spousal consent to waive a qualified joint and survivor annuity or a qualified preretirement survivor annuity. REA does not require spousal consent under an exempt profit-sharing or stock bonus plan to be made at the same time as spousal consent under a plan subject to the survivor benefit requirements. Thus, REA generally does not require that spousal consent be obtained to make a distribution (other than the payment of benefits in the form of a life annuity), such as an in-service withdrawal, to a participant under a profit-sharing or stock bonus plan.

A plan may immediately distribute the present value of the benefit under either the qualified joint and survivor annuity or the qualified preretirement survivor annuity if the present value of the benefit does not exceed $3,500. An accrued benefit is immediately distributable if any part of the benefit may be distributed to the participant before the later of the normal retirement age or age 62.

No distribution may be made after the annuity starting date unless the participant and the participant's spouse (or the surviving spouse of the participant) consent in writing to the distribution. Thus, a plan could permit a participant and the participant's spouse to change the form of benefits received under the plan after the annuity starting date.

In addition, if the present value of the benefit under the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, then the consent of the participant and spouse (or the surviving spouse if the participant has died) must be obtained before the plan can immediately distribute any part of the present value in a form other than a qualified joint and survivor annuity or a qualified preretirement survivor annuity.

Present law does not preclude a plan from permitting a spouse to make a conditional waiver of a survivor benefit. For example, a plan could offer a spouse the right to waive a qualified preretirement survivor annuity, effective only if the present value of the annuity is less than another death benefit payable to the spouse under the plan.

Explanation of Provision

Designation of nonspouse beneficiary

Under the bill, a spouse's consent to waive a qualified joint and survivor annuity or a qualified preretirement survivor annuity is not valid unless the consent (1) names a designated beneficiary who will receive any survivor benefits under the plan and the form of any benefits paid under the plan (including the form of benefits that the designated beneficiary will receive), or (2) acknowledges that the spouse has the right to limit consent only to a specific beneficiary or a specific form of benefits, and that the spouse voluntarily elects to relinquish one or both of such rights.

The spousal consent form is to contain such information as may be appropriate to disclose to the spouse the rights that are relinquished. If the consent names a designated beneficiary, then any subsequent change to the beneficiary designation (or the form of distribution, if any, specified in the consent) is invalid unless a new consent is obtained from the participant's spouse. Of course, spousal consent is not required if a participant dies and the beneficiary designated (with spousal consent) to receive the participant's death benefit elects to receive the benefit in a form not specified in the waiver.

If a plan is required to permit the waiver of a survivor benefit, the committee intends that the plan may not restrict the spouse's ability to waive a benefit by providing only a general consent to waive under which a spouse relinquishes the right to designate a beneficiary or a form of benefit. Thus, a spouse is always permitted to waive a survivor benefit only in favor of a specific beneficiary or a specific form of benefit. The committee intends that, if a plan permits a general consent, the acknowledgment of the general consent should indicate that the spouse is aware that a more limited consent could be provided.

Similar rules relating to the manner in which spousal concent is obtained apply to a spousal consent obtained to waive a death benefit under a profit-sharing or stock bonus plan that is not otherwise subject to the survivor benefit requirements.

Spousal consent with respect to loans

In addition, under the bill, in the case of a participant's benefit that is not exempt from the survivor benefit requirements, a plan is to provide that no portion of the accrued benefit of the participant may be used as security for any loan unless, at the time the security agreement is entered into, the participant's spouse (determined as of the date the security agreement is entered into) consents to the use of the accrued benefit as security. If the individual who is the participant's spouse at the time that the security agreement is entered into consents, then the plan is not prevented by the spousal consent rules from realizing its security interest in the event of a default on the participant's loan, even if, at the time of the default, the participant is married to a different spouse. Similarly, if a participant is not married at time the security agreement is executed, then the plan is not prevented from realizing its security interest if a default on the loan subsequently occurs when the participant is married.

For example, assume that a spouse consents to a pledge of the participant's account balance as security for a loan from the plan. Under the plan, the plan administrator is to realize on the security for the loan if it is not repaid by the time the employee separates from service. Because the spouse consented to the loan, the plan is not prevented from using the security (i.e., the account balance) to recover the amount due on the loan. In addition, if the participant had remarried after the loan was made but before the plan realized on its security, then the consent of the first spouse would continue to be effective for purposes of determining the plan's ability to realize its security interest.

In the case of a participant whose accrued benefit is not subject to the survivor benefit provisions at the time the security is provided (e.g., a profit-sharing plan that is not a transferee plan with respect to the participant), the plan will not be treated as failing to meet the survivor benefit requirements if the participant's benefit is used as security for a loan and spousal consent is not obtained for the use of the accrued benefit as security, even if the plan subsequently becomes subject to the survivor benefit requirements with respect to the participant.

The bill further clarifies that for purposes of determining the survivor benefit, if any, to which a participant's surviving spouse is entitled upon the participant's death, any security interest held by the plan by reason of a loan outstanding to the participant is taken into account and, if there is a default on the loan, then the participant's nonforfeitable accrued benefit is first reduced by any security interest held by the plan by reason of a loan outstanding to the participant. This rule applies only if (a) the loan is secured by the participant's accrued benefit and (b) the spousal consent requirements, if any, applicable to the participant's accrued benefit at the time the security arrangement was entered into were satisfied. In addition, the participant's nonforfeitable accrued benefit is adjusted (where appropriate), taking into account the terms of the plan and the terms of the qualified domestic relations order, by the value of amounts payable under any outstanding qualified domestic relations order, for purposes of determining the survivor benefit, if any, to which the participant's surviving spouse is entitled upon the participant's death.

Similarly, upon a married participant's retirement, for purposes of determining the amount of the joint and survivor annuity payable to the participant and spouse, any security held by the plan by reason of a loan outstanding to the participant and the present value of any outstanding qualified domestic relations order are taken into account in the same manner as they are taken into account for purposes of the qualified preretirement survivor annuity.

Determination of amount of preretirement survivor annuity

The bill provides that, in the case of a defined contribution plan subject to the survivor benefit requirements, the participant's vested account balance (including any portion of the account balance attributable to employee contributions) is used for purposes of determining the amount of the qualified preretirement survivor annuity.

Scope of spousal consent requirements

The bill clarifies that the election period and notice requirements with respect to spousal consent also apply in the case of spousal consent (1) to waive a survivor benefit under a plan exempt from the preretirement survivor annuity and joint and survivor annuity requirements, (2) to permit the participant's accrued benefit to be pledged as security for a loan, (3) to permit the distribution of amounts after the annuity starting date, and (4) to permit the immediate distribution of amounts in excess of $3,500.

In the case of a loan secured by a participant's accrued benefits, the notice and election period requirements apply at the time the security arrangement is entered into. Consequently, the election period for spousal consent with respect to the execution of a security agreement is the 90-day period before the execution of the agreement.

Similarly, in the case of a cash out subsequent to a participant's annuity starting date, the election period is the 90-day period before any distribution is permitted.

The committee intends that, for purposes of the spousal consent rules, in the case of a participant residing outside of the United States, that spousal consent may be witnessed by the equivalent of a notary public in the jurisdiction in which consent is executed. The committee also intends that an election under section 242(b) of the Tax Equity and Fiscal Responsibility Act of 1982 will not be invalidated because a plan secures spousal consent to the election.

In addition, the committee intends that a participant will be treated as having no spouse, if the participant has been abandoned (within the meaning of local law) by the spouse, even if the participant knows where the spouse is located. The committee intends that the spousal consent requirement may be waived, however, only if the participant has a court order specifying that the participant has been abandoned within the meaning of local law. Of course, a participant could provide a qualified domestic relations (such as a separation agreement) rather than a court order specifying that the participant has been abandoned.

Effective Dates

The provision relating to spousal consents to beneficiary designations is effective for consents given on or after January 1, 1985.

The provision relating to accrued benefits pledged as security for a loan is effective for loans made after August 18, 1985. In addition, any accrued benefits pledged as security for a loan prior to August 19, 1985, are exempt from the requirement that spousal consent be obtained. Accordingly, in the case of a pledge made before August 19, 1985, a plan is not required to obtain the consent of any spouse of a participant before it applies the benefit against the loan. Finally, any loan that is revised, extended, renewed, or renegotiated after August 18, 1985, is treated as a loan made (and security pledged) after August 18, 1985.

5. NOTICE REQUIREMENT FOR INDIVIDUALS HIRED AFTER AGE 35

Present Law

A plan is required to notify participants of their rights to decline a qualified preretirement survivor annuity before the applicable election period. This notice is to be provided within the period beginning on the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year in which the participant attains age 35. This notice is to be comparable to the notice required with respect to the qualified joint and survivor annuity. The qualified preretirement survivor benefit coverage may become automatic prior to the time that the participant is entitled to decline such coverage.

Explanation of Provision

The bill provides that the period during which notice is required to be provided to an individual does not end before the latest of (1) the close of the plan year in which a participant attains age 35, (2) a reasonable period of time after the individual becomes a plan participant, (3) a reasonable period of time after the survivor benefit applicable to a participant is no longer subsidized (as defined in Code sec. 417(a)(4)), or (4) a reasonable period of time after the survivor benefit provisions (Code sec. 401(a)(11)) become applicable with respect to a participant.

6. CLARIFICATION OF RULE FOR SUBSIDIZED BENEFITS

Present Law

Under REA, a plan is not required to provide notice of the right to waive the qualified joint and survivor annuity or the qualified preretirement survivor annuity if the plan fully subsidizes the cost of the benefit. A plan fully subsidizes the cost of a benefit only if the failure to waive the benefit by a plan participant does not result in either (1) a decrease in any plan benefits with respect to the participant, or (2) in increased plan contributions by the participant.

Explanation of Provision

The bill clarifies that a plan is not required to provide a participant with a right to waive a qualified joint and survivor annuity or qualified preretirement survivor annuity if the plan fully subsidizes the cost of the benefit.

The bill further clarifies that the present law exception to the notice requirement only applies if (1) the plan fully subsidizes the benefit and (2) the plan does not permit a participant to waive the benefit.

The committee intends that a benefit is not to be considered fully subsidized if the cost of the survivor benefit is spread among all plan participants, including participants who are not married, or among some subgroup of participants, even if the benefits and contributions of those charged with the cost of survivor benefit protection are unaffected by the waiver or failure to waive survivor benefit protection.

7. CLARIFICATION OF ANNUITY STARTING DATE

Present Law

Present law provides that the annuity starting date means the first period for which an amount is received as an annuity (whether by reason of death or disability).

Explanation of Provision

Under the bill, the definition of the annuity starting date is amended to provide that, in the case of a benefit not payable in the form of an annuity, the annuity starting date is the date on which such benefit is to be paid.

C. Qualified Domestic Relations Orders (Sec. 2(c) of the Bill, Sec. 206 of ERISA, and Secs. 502 and 414(p) of the Code)

Under present law, neither ERISA nor the Code treats a qualified domestic relations order as a prohibited assignment or alienation of benefits under a pension plan. In addition, the Act creates an exception to the ERISA preemption provision only with respect to these orders.

A "qualified domestic relations order" is a domestic relations order that (1) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under a pension plan, and (2) meets certain other requirements. A domestic relations order is any judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of the participant, and is made pursuant to a State domestic relations law (including community property law).

An alternate payee includes any spouse, former spouse, child, or other dependent of a participant who is recognized by a qualified domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to the participant.

The qualified domestic relations order provisions do not prevent the payment of amounts in pay status with respect to an alternate payee to a State agency that is an agent of an alternate payee or the payment of such amounts if the alternate payee consents to such payment (for example, to meet the requirements relating to Aid to Families with Dependent Children). In such a case, payment to the agency does not result in disqualification of the order and, under normal principles of constructive receipt, the alternate payee is treated as having received the amounts paid under the order.

1. TAX TREATMENT OF DIVORCE DISTRIBUTIONS

Present Law

Special rules are provided for determining the tax treatment of benefits subject to a qualified domestic relations order. For purposes of determining the taxability of benefits, the alternate payee is treated as a distributee with respect to payments received from or under a plan.

In addition, net employee contributions (together with other amounts treated as the participant's investment in the contract) are apportioned between the participant and the alternate payee under regulations prescribed by the Secretary of the Treasury.

Explanation of Provision

The bill provides that the special rules for determining the taxability of benefits subject to a qualified domestic relations order apply only to distributions made to an alternate payee who is the spouse or the former spouse of the participant. Thus, distributions to a spouse or former spouse generally will be included in the gross income of the spouse or former spouse. Under the bill, however, a distribution to an alternate payee other than a spouse (e.g., a child) is generally to be includible in the gross income of the participant.

In addition, under the bill, the rules for allocating an employee's investment in the contract between the employee and an alternate payee apply only if the alternate payee is a spouse or former spouse of the participant. If the alternate payee is not a spouse or former spouse, then the investment in the contract is not allocated to the alternate payee and is recovered by the participant under the general basis recovery rules applicable to the participant.

2. DETERMINATION BY PLAN ADMINISTRATOR

Present Law

To be a qualified order, a domestic relations order must clearly specify (1) the name and last known mailing address (if available) of the participant and the name and mailing address of each alternate payee to which the order relates, (2) the amount or percentage of the participant's benefits to be paid to an alternate payee or the manner in which the amount is to be determined, and (3) the number of payments or period for which payments are required. Subsequent vesting or benefit accruals of a participant are not taken into account in determining the amount payable to an alternate payee unless specifically provided under the domestic relations order.

A domestic relations order is not a qualified order if it (1) requires a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, (2) requires the plan to provide increased benefits, or (3) requires payment of benefits to an alternate payee that are required to be paid to another alternate payee under a previously existing qualified domestic relations order.

The administrator of a plan that receives a domestic relations order is required to notify promptly the participant and any other alternate payee of receipt of the order and the plan's procedures for determining whether the order is qualified. In addition, within a reasonable period after receipt of the order, the plan administrator is to determine whether the order is qualified and notify the participant and alternate payee of the determination.

During any period in which the issue of whether an order is a qualified order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator is to defer the payment of any benefits in dispute. These deferred benefits are segregated either in a separate account in the plan or in an escrow account. A plan administrator similarly could not permit a loan to be made to the participant during the period of deferral if the loan is secured by the benefits in dispute.

If the order is determined to be a qualified domestic relations order within 18 months after benefits are first deferred, then the plan administrator is to pay the segregated amounts to the persons entitled to receive them. If the plan administrator determines that the order is not a qualified order or, after the 18-month period has expired, the plan administrator has not resolved the issue of whether the order is qualified, the segregated amounts are paid to the person or persons who would have received the amounts if the order had not been issued.

Explanation of Provision

The committee intends that an order will not fail to be a qualified domestic relations order even if the form of the benefit does not continue to be a form permitted under the plan on account of (1) a plan amendment or (2) a change of law. In the case of a plan amendment, an alternate payee remains entitled to receive benefits in the form specified in the order unless the alternate payee elects to receive benefits in another form and the election of such alternate form does not affect, in any way, the amount or form of benefits payable to the participant. In the case of a change of law, which makes the form specified in the order impermissible, the committee intends that the plan is to permit the alternate payee to select a form of benefit specified in the plan, provided the selection of an alternative form by the alternate payee does not affect, in any way, the amount or form of benefits payable to the participant.

The bill makes it clear that the 18-month period during which benefits may be deferred begins with the date on which any payments would, but for the deferral, be required to commence. Accordingly, if a payment is deferred pending the resolution of a dispute, then that payment and each other payment that is deferred within the next 18 months because of the dispute are to be segregated. If the dispute is not resolved within 18 months after the first payment is deferred, then all payments deferred during the 18-month period with respect to the dispute are to be paid to the persons who would have received them if the order had not been issued.

If a plan administrator determines that a domestic relations order is defective before the expiration of the 18-month suspension period, the committee intends that the plan administrator may delay payment of a participant's benefit until the expiration of the 18-month period if the plan administrator has notice that the parties are attempting to rectify any deficiencies in the order.

Notice of issuance of a stay during the time an appeal is pending is deemed to be notice that the parties are attempting to cure deficiencies in a domestic relations order. Further, the committee intends that a plan administrator will honor a restraining order prohibiting the disposition of a participant's benefits pending resolution of a dispute with respect to a domestic relations order.

In addition, the bill eliminates the requirement that a defined benefit plan must establish an escrow account for amounts that would have otherwise been paid during the 18-month period. Instead, the plan administrator is required only to account separately for such amounts. If the deficiency is not cured or the dispute not resolved within the 18-month period, all payments deferred during the 18-month period are to be paid to the persons who would have received them if the stay or order had not been issued.

3. APPLICATION OF DOMESTIC RELATIONS PROVISIONS TO PLANS NOT SUBJECT TO ASSIGNMENT OR ALIENATION RESTRICTIONS

Present Law

Under present law, it is unclear whether the rules relating to qualified domestic relations orders apply to plans, such as governmental plans (within the meaning of sec. 414(d) of the Code) that are not subject to the assignment or alienation restrictions of ERISA and the Code.

Explanation of Provision

The bill clarifies that the qualified domestic relations provisions do not apply to any plan to which the assignment or alienation restrictions do not apply. For example, a domestic relations order relating to the division of pension benefits of a participant in a plan maintained by a governmental employer is not required to meet the rules relating to qualified domestic relations orders because the payment of benefits to a spouse or former spouse of the participant is not a prohibited assignment or alienation of the participant's benefits.

4. COORDINATION OF DOMESTIC RELATIONS PROVISIONS WITH FEDERAL GARNISHMENT RESTRICTIONS

Present Law

Under present law, it is unclear whether the payment of benefits pursuant to a qualified domestic relations order constitutes a garnishment for purposes of Federal or State law restrictions on garnishment of wages.

Explanation of Provision

The bill clarifies that the payment of benefits pursuant to a qualified domestic relations order is not treated as a garnishment of wages for purposes of Federal or State law restrictions on garnishment.

5. COORDINATION WITH QUALIFIED PLAN REQUIREMENTS

Present Law

A plan is not treated as failing to satisfy the requirements of section 401(a) or 401(k) of the Internal Revenue Code that prohibit payment of benefits subsequent to the participant's attainment of the earliest retirement age under the plan, but prior to termination of employment or such time as distributions are otherwise permitted solely because the plan makes payments to the alternate payee in accordance with a qualified domestic relations order. However, it is unclear whether payments made to an alternate payee pursuant to a qualified domestic relations order prior to the date at which the participant would have attained the earliest retirement age would violate these qualification requirements.

Explanation of Provision

The bill makes it clear that a plan is not treated as failing to satisfy the qualification requirements of section 401(a) or (k) or section 409(d) of the Internal Revenue Code (prohibiting payment of benefits prior to termination of employment or such time as distributions are otherwise permitted) solely because the plan makes payment to the alternate payee, even if the payments are made with respect to a participant who has not separated from service, and they commence before the participant has attained the earliest retirement age under the plan. This exception applies, however, only if the present value of the benefit to be paid to an alternate payee (1) does not exceed $3,500 or (2) is at least $3,500 and the alternate payee consents in writing to such earlier distribution. Further, the exception applies only if the distribution, if paid to the participant, would not contravene the provisions of the plan (except for the fact that the participant has not yet separated from service). Of course, a plan could not make distributions to an alternate payee at a time not specified in a qualified domestic relations order unless (1) the order also provided for such earlier distributions pursuant to an agreement between the plan and an alternate payee, and (2) the plan authorized such distributions.

In determining whether the present value of the benefit payable to the alternate payee exceeds $3,500, the present value of the participant's accrued benefit (after reduction for the benefits payable to the alternate payee) is disregarded. Similarly, for purposes of determining whether the present value of a benefit payable to a participant exceeds $3,500, the present value of amounts payable to an alternate payee under a qualified domestic relations order is disregarded.

The bill provides that, to the extent provided in a qualified domestic relations order, a spouse of a participant is not treated as a spouse. For example, a qualified domestic relations order could provide for the division of a participant's accrued benefits under a pension plan as part of a separation agreement and could further provide that the participant's spouse is not entitled to receive any survivor benefits under the usual survivor benefits provisions. Thus, the plan administrator would not be required to secure spousal consent to the participant's election to waive a survivor benefit.

In addition, the bill authorizes the Secretary of the Treasury to issue such regulations as may be necessary to otherwise coordinate the Code provisions affecting qualified domestic relations orders (sections 401(a)(13)(B) and 414(p)), and the regulations issued by the Secretary of Labor thereunder with other Code provisions affecting qualified plans. The Secretary of Labor has authority to issue regulations under the qualified domestic relations order provisions of ERISA, and the Code (secs. 401(a)(13)(B) and 414(p)), and the bill does not affect the authority of the Secretary of Labor to prescribe such regulations.

D. Notice of Rollover Treatment (Sec. 2(d) of the Bill and Secs. 402 and 6652 of the Code)

Present Law

When the administrator of a qualified plan makes a qualifying rollover distribution, the administrator is to provide notice to the recipient that (1) the distribution will not be taxed currently to the extent transferred to another qualified plan or an IRA, and (2) the transfer must be made within 60 days of receipt in order to qualify for this tax-free rollover treatment.

Failure of the plan administrator to give the required notice of rollover treatment results in imposition of a $10 penalty for each failure (up to $5,000) for each calendar year. This penalty does not apply if the failure is shown to be due to reasonable cause and not to willful neglect.

Explanation of Provision

The bill makes it clear that a plan administrator is to provide notice when making any distribution eligible for rollover treatment. Thus, for example, notice is to be provided when a distribution eligible for rollover treatment pursuant to the partial rollover rules is made.

E. Transitional Rules (Sec. 2(e) of the Bill and Sec. 303 of the Act)

Present Law

The qualified joint and survivor annuity and qualified preretirement survivor annuity provisions added by the Act generally are effective for plan years beginning after December 31, 1984.

The new rules for qualified joint and survivor benefits and preretirement survivor benefits apply to any participant who performs at least one hour of service or has at least one hour of paid leave under the plan on or after the date of enactment. In addition, a qualified preretirement survivor annuity must be provided (unless another form of benefit is elected) in the case of any participant who (1) performs at least one hour of service or has at least one hour of paid leave under the plan on or after August 23, 1984, (2) dies before the annuity starting date, and (3) dies before the first day of the first plan year to which the provisions apply.

The Act immediately imposes certain survivor benefit requirements with respect to participants who die before the plan is required to be amended to comply with the Act. During this transition period, it appears that a plan is required to make payments to a surviving spouse notwithstanding the possible contractual claims of other designated beneficiaries. However, although the Act was not intended to impose liabilities on pension plans in excess of a participant's accrued benefits or in excess of the survivor benefits required to be provided to surviving spouses, it is unclear whether the survivor benefits required by the Act reduce the total death benefits payable to other designated beneficiaries.

Explanation of Provision

The bill clarifies the application of the transitional rule relating to qualified preretirement survivor benefits in situations in which the participant had designated a beneficiary other than the participant's spouse. Under the bill, the present value of a death benefit payable to any beneficiary with respect to an individual who (1) performs at least one hour of service under the plan on or after August 23, 1984, (2) dies before the annuity starting date, and (3) dies before the effective date of the Act, may be reduced by the present value of the amount payable to the participant's surviving spouse pursuant to the transition rule. If death benefits payable under a plan are divided among more than one beneficiary, the present value of the amount payable to each beneficiary (including benefits, other than survivor benefits payable under the transition rules, payable to the surviving spouse) is reduced proportionately by the amount payable to the surviving spouse pursuant to the transition rule.

However, the bill also permits the surviving spouse to waive the right to receive the qualified preretirement survivor annuity. Under the bill, if it is made on or before the close of the second plan year to which the Act applies, then the waiver is not to be treated as a transfer for purposes of Federal gift taxes or as a prohibited assignment or alienation for purposes of ERISA or the Code. In addition, death benefits waived by the surviving spouse during this period would not be includible in the spouse's income. Such benefits would be includible in the gross income of the recipient.

F. Loans to Owner-Employees (sec. 2(g) of the Bill and Sec. 408 of ERISA)

Present Law

Under present law, a plan fiduciary may not cause a pension plan to engage in a prohibited transaction, which includes any direct or indirect lending of money or other extension of credit between the plan and a party in interest. Under ERISA, an employee is a party in interest with respect to the plan in which the employee participates.

A loan from a plan to a plan participant is not treated as a prohibited transaction if the loan (1) is available to all participants and beneficiaries on a reasonably equivalent basis, (2) is not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees, (3) is made in accordance with the specific provisions relating to such loans set forth in the plan, (4) bears a reasonable rate of interest, and (5) is adequately secured.

Under ERISA and the Code, this exemption from the prohibited transaction provision does not apply to any loan to an owner employee (at least a 10-percent owner of an unincorporated business or partnership), a member of the family of an owner employee, or a 50 percent shareholder of a sub S corporation maintaining the plan from which the loan is made. However, the Code permits an owner employee or 50-percent shareholder to qualify for the exemption from the prohibited transaction provision if approved by the Department of Labor under a special exemption procedure. No similar provision applies under ERISA.

Explanation of Provision

The provision conforms the treatment of loans to owner employees and 50-percent shareholders under ERISA to the treatment under the Code. Thus, an owner employee or 50-percent shareholder would be permitted to qualify for the exemption from the prohibited transaction provision if a special exemption is approved by the Department of Labor.

Effective Date

The provision is effective for applications for exemptions submitted to the Department of Labor for transaction occurring after the date of enactment.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

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SEC. 72. ANNUITIES: CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS

(a) * * *

* * * * * * *

(m) SPECIAL RULES APPLICABLE TO EMPLOYEE ANNUITIES AND DISTRIBUTIONS UNDER EMPLOYEE PLANS.—

* * * * * * *

(10) DETERMINATION OF INVESTMENT IN THE CONTRACT IN THE CASE OF QUALIFIED DOMESTIC RELATIONS ORDERS.—Under regulations prescribed by the Secretary, in the case of a distribution or payment made to an alternate payee *who is the spouse or former spouse of the participant* pursuant to a qualified domestic relations order (as defined in section 414(p)), the investment in the contract as of the date prescribed in such regulations shall be allocated on a pro rata basis between the present value of such distribution or payment and the present value of all other benefits payable with respect to the participant to which such order relates.

* * * * * * *

Subchapter D—Deferred Compensation, Etc.

Part I. Pension, profit-sharing, stock bonus plans, etc,
Part II. Certain stock options.

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart A—General Rule

* * * * * * *

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) * * *

* * * * * * *

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant [who retires under the plan] *who does not die before the annuity starting date,* the accured benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan.

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant nonforfeitable accured benefit *(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)* is payable in full, on the death of the participant, to the participant's surviving spouse (or if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2)[(A)], to a designated beneficiary).

(II) such participant does not elect a payment of benefits in the form of a life annuity; and

(III) with respect to such participant such plan is not a direct or indirect transfer *(in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this cause applied with respect to the participant.*

Clause (iii)(III) shall apply only with respect to the transferred assets and income therefrom if the plan separately accounts for such assets and any income therefrom.

* * * * * * *

(m) COORDINATION WITH QUALIFIED DOMESTIC RELATIONS ORDERS.—The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

[(l)] *(n)* CROSS REFERENCE.—For exemption from tax of a trust qualified under this section, see section 501(a).

SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—

(1) * * *

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(6) SPECIAL ROLLOVER RULES.—

(A) * * *

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(F) QUALIFIED DOMESTIC RELATIONS ORDERS.—If—

(i) within 1 taxable year of the recipient, the balance to the credit of the recipient by reason of any qualified domestic relations order (within the meaning of section 414(p)) is distributed or paid to the recipient,

(ii) the recipient transfers any portion of the property the recipient receives in such distributions to an eligible retirement plan described in subclause (I) or (II) of paragraph (5)(E)(iv), and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then the portion of the distribution so transferred shall be treated as a distribution described in paragraph (5)[(A)].

(G) TREATMENT OF POTENTIAL FUTURE VESTING.—

(i) IN GENERAL.—For purposes of paragraph (5), in determining whether any portion of a distribution on account of the employee's separation from service may be transferred in a transfer to which paragraph (5)(A) applies, the balance to the credit of the employee shall be determined without regard to any increase in vesting which may occur if the employee is re-employed by the employer.

(ii) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—If—

(I) any portion of a distribution is transferred in a transfer to which paragraph (5)(A) applies by reason of clause (i),

(II) the employee is subsequently re-employed by the employer, and

(III) as a result of service performed after being so re-employed, there is an increase in the employee's vesting for benefits accrued before the separation referred to in clause (i),

then the provisions of paragraph (5)(D)(iii) shall apply to any distribution from the plan after the distribution referred to in clause (i). The preceding sentence shall not apply if the distribution referred to in subclause (I) is made without the consent of the participant.

[(9) ALTERNATE PAYEE UNDER QUALIFIED DOMESTIC RELATIONS ORDER TREATED AS DISTRIBUTEE.—For purposes of subsection (a)(1) and section 72, [the alternate payee shall be treated] *any alternate payee who is the spouse or former spouse of the participant shall be treated* as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p);

* * * * * * *

(c) TAX ON LUMP SUM DISTRIBUTIONS—

(1) * * *

* * * * * * *

(6) TREATMENT OF POTENTIAL FUTURE VESTING.—

(A) IN GENERAL.—For purposes of determining whether any distribution which becomes payable to the recipient on account of the employee's separation from service is a lump sum distribution, the balance to the credit of the employee shall be determined without regard to any increase in vesting which may occur if the employee is re-employed by the employer.

(B) RECAPTURE IN CERTAIN CASES.—If

(i) an amount is treated as a lump sum distribution by reason of subparagraph (A),

(ii) special lump sum treatment applies to such distribution,

(iii) the employee is subsequently re-employed by the employer; and

(iv) as a result of services performed after being so re-employed, there is an increase in the employee's vesting

for benefits accrued before the separation referred to in subparagraph (A),

under regulations prescribed by the Secretary, the tax imposed by this chapter for the taxable year (in which the increase in vesting first occurs) shall be increased by the reduction in tax which resulted from the special lump sum treatment (and any election under paragraph (4)(B) shall not be taken into account for purposes of determining whether the employee may make another election under paragraph (4)(B)).

(C) Special lump sum treatment.—For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

(ii) is treated as long-term capital gain under subsection (a)(2) of this section of section 403(a)(2).

(D) Vesting.—For purposes of this paragraph the term "vesting" means the portion of the accrued benefits derived from employer contributions to which the participant has a nonforfeitable right.

(i) **Written Explanation to Recipients of Distribution Eligible Rollover Treatment.**—

(1) **In general.**—The plan administrator of any plan shall when making a **[**qualifying**]** rollover distribution, provide a written explanation to the recipient—

(A) of the provisions under which such distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution, and

(B) if applicable, the provisions of subsection (a0(2) and (e) of this section.

[(2) **Definitions.**—For purposes of this subsector, the terms "qualifying rollover distribution" and "eligible retirement plan" have the respective meanings given such terms by subsection (a0(5)(E).**]**

(2) **Definitions.**—For purposes of this subsection—

(A) **Eligible rollover distribution.**—The term "eligible rollover distribution" means any distribution any portion of which may be excluded from gross income under subsection (a)(5) of this section or subsection (a)(4) of section 403 if transferred to an eligible retirement plan in accordance with the requirements of such subsection.

(B) **Eligible retirement plan.**—The term "eligible retirement plan" has the meaning given such term by subsection (a)(5)(E)(iv).

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SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) * * *

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(k) **Simplified Employee Pension Defined.**—

(1) * * *

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(2) PARTICIPATION REQUIREMENTS.—This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age [25], and

(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3)

Subpart B—Special Rules

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SEC. 411. MINIMUM VESTING STANDARDS.

(a) * * *

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(3) CERTAIN PERMITTED FORFEITURES SUSPENSIONS, ETC.—For purposes of this subsection—

(A) * * *

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(D) WITHDRAWAL OF MANDATORY CONTRIBUTIONS.—

(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). [In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal.] *The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on* *which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.*

* * * * * * *

(7) Accrued benefit.—

(A) * * *

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(C) Repayment of subparagraph (b) distributions.—For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit.

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

[In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal.] *The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.*

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(d) Special Rules.—

(1) * * *

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[(4) Class year plans.—The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term "class year plan" means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.]

(4) CLASS-YEAR PLANS.—

(A) IN GENERAL.—The requirements of subsection (a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

(B) 5-YEAR BREAK IN SERVICE.—For purposes of subparagraph (A) if—

(i) any contributions are made on behalf of a participant with respect to any plan year, and

(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any right to or derived from the contributions made with respect to such plan year.

(C) CLASS-YEAR PLAN.—For purposes of this section, the term "class-year plan" means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

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SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) * * *

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(p) QUALIFIED DOMESTIC RELATIONS ORDER DEFINED.—For purposes of this subsection and section 401(a)(13)—

(1) IN GENERAL.—

(A) QUALIFIED DOMESTIC RELATIONS ORDER.—The term "qualified domestic relations order" means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) DOMESTIC RELATIONS ORDER.—The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provisions of child support, alimony payments, or marital property rights to a spouse, *former spouse,* child, or other dependent or a participant; and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) ORDER MUST CLEARLY SPECIFY CERTAIN FACTS.—A domestic relations order meeting the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order;

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined;

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(5) TREATMENT OF FORMER SPOUSE AS SURVIVING SPOUSE FOR PURPOSES OF DETERMINING SURVIVOR BENEFITS.—To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of [sections 401(a)(11) and 417] *sections* 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes) and

(B) if married for at least 1 year, the surviving *former* spouse shall be treated as meeting the requirements of section 417(d).

[A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order.]

(6) PLAN PROCEDURES WITH RESPECT TO ORDERS.—

(A) NOTICE AND DETERMINATION BY ADMINISTRATOR.—In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and [any other] *each* alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) PLAN TO ESTABLISH REASONABLE PROCEDURES.—Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) PROCEDURES FOR PERIOD DURING WHICH DETERMINATION IS BEING MADE.—

(A) IN GENERAL.—During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise, the plan administrator **[**shall segregate in a separate account in the plan or in an escrow account the amounts**]** *shall separately account for the amounts (hereinafter in this paragraph referred to as the "segregated amounts")* which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) PAYMENT TO ALTERNATE PAYEE IF ORDER DETERMINED TO BE QUALIFIED DOMESTIC RELATIONS ORDER.—If within **[**18 months**]** *the 18-month period described in subparagraph (E)* the order (or modification thereof is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts **[**plus**]** *including* any interest thereon) to the person or persons entitled thereto

(C) PAYMENT TO PLAN PARTICIPANT IN CERTAIN CASES.—If within **[**18 months**]** *the 18-month period described in subparagraph (E)*—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts **[**plus**]** *including* any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) SUBSEQUENT DETERMINATION OR ORDER TO BE APPLIED PROSPECTIVELY ONLY.—Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period *described in subparagraph (E)* shall be applied prospectively only

(E) DETERMINATION OF 18-MONTH PERIOD.—For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) ALTERNATE PAYEE DEFINED.—The term "alternate payee" means any spouse former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) SUBSECTION NOT TO APPLY TO PLANS TO WHICH SECTION 401(a)(13) DOES NOT APPLY.—This subsection shall not apply to any plan to which section 401(a)(13) does not apply.

(10) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—With respect to the requirements of subsections (a) and (k) of section 401 and section 409(d), a plan shall not be treated as failing to

meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

[(9)] *(11)* CONSULTATION WITH THE SECRETARY.—In prescribing regulations under the subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

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SEC 415. LIMITATIONS ON BENEFITS AND CONTRIBUTION UNDER QUALIFIED PLANS.

(a) GENERAL RULE.—

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(b) LIMITATION FOR DEFINED BENEFIT PLANS.—

(1) * * *

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(2) ANNUAL BENEFIT.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(a)(5), 403(a)(4), and 408(d)(3)) are made.

(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFIT.—If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(a)(5), 403(a)(4), and 408(d)(3)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section [401(a)(11)(G)(iii)] *417*) shall not be taken into account.

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SEC. 471. DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF MINIMUM SURVIVOR ANNUITY REQUIREMENTS.

(a) ELECTION TO WAIVE QUALIFIED JOINT AND SURVIVOR ANNUITY OR QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

(1) IN GENERAL.—A plan meets the requirements of section 401(a)[(ii)] *(11)* only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified pretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, [and]

(B) the plan meets the requirements of paragraphs [(2) and (3)] *(2), (3), and (4)* of this subsection, *and*

(C) the plan provides that, if this section applies to a participant at the time a loan is made (or, if later, when it is proposed to secure such loan by part or all of the participant's accrued benefit), no portion of the participant's accrued benefit may be used as security for such loan unless the spouse of the participant (if any) consents in writing to such use.

(2) SPOUSE MUST CONSENT TO ELECTION.—Each plan shall provide that an election under paragraph (1)(A)(i) shall not take place unless—

[(A) the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or:]

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

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(3) PLAN TO PROVIDE WRITTEN EXPLANATION.—

(A) * * *

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(B) EXPLANATION OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 *or, if later, within a reasonable period after the individual becomes a participant,* (and consistent with such regulations as the Secretary may prescribe) a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A)

(4) REQUIREMENT TO SPOUSAL CONSENT FOR USING PLAN ASSETS AS SECURITY FOR LOANS.—Each plan shall provide that, if section 401(a)(11) applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

[(4)] *(5)* SPECIAL RULES WHERE PLAN FULLY SUBSIDIZES COSTS—

(A) IN GENERAL.—The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit of the qualified preretirement survivor annuity form of benefit, as the case may be, [if the plan] *if such benefit may not be waived (or another beneficiary selected) and if the plan* fully subsidizes the costs of such benefit.

[(5)] *(6)* APPLICABLE ELECTION PERIOD DEFINED.—For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 90-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(c) DEFINITION OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—For purposes of this section and section 401(a)(11)—

(1) IN GENERAL.—Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity [or] *for* the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death.

(II) survived to the earliest retirement age.

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) Special rule for defined contribution plans.—In the case of any defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B), the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of [the account balance of the participant as of the date of death] *the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a)).*

(3) Security interests taken into account.—For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

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(f) Other Definitions and Special Rules.—For purposes of this section and section 40(a)11—

(1) Vested participants.—The term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 411(a)) to any portion of [the accrued benefit derived from employer contributions *such participant's accrued benefit*]

[(2) Annuity starting date.—The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).]

(2) Annuity starting date.—

(A) In general.—The term "annuity starting date" means—

(i) the first day of the first period for which an amount is to be received as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the day on which such benefit is to be paid.

(B) Special rule for disability benefits.—For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) Earliest retirement age.—The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(4) Plan may take into account increased costs.—A plan may take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity of a qualified preretirement survivor annuity.

(5) Distributions by reason of security interests.—If the use of any participant's accrued benefit (or any portion thereof)

as security for a loan meets the requirements of subsection (a)(4), nothing in this section or section 411(a)(11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(6) REQUIREMENTS FOR CERTAIN SPOUSAL CONSENTS.—No consent of a spouse shall be effective for purposes of subsection (e)(1) or (e)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a)(1)(A) are met.

[(5)] *(7)* CONSULTATION WITH THE SECRETARY OF LABOR.—In prescribing regulations under this section and section 401(a)(11), the Secretary shall consult with the Secretary of Labor.

*   *   *   *   *   *   *

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

*   *   *   *   *   *   *

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

*   *   *   *   *   *   *

SUBTITLE B—REGULATORY PROVISIONS

*   *   *   *   *   *   *

PART 2—PARTICIPATION AND VESTING

*   *   *   *   *   *   *

MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) * * *

*   *   *   *   *   *   *

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 205).

*   *   *   *   *   *   *

(D)(i) * * *

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purpoees of section 204(c)(2)(C) (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal).

[In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal.] *The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.*

(c)(1) * * *

* * * * * * *

[(3) The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this part, the term "class year plan" means a profit sharing, stock bonus, or money purchase plan which provides for the separate non-forfeitability of employees' rights to or derived from the contributions for each plan year.]

(3)(A) The requirements of subsection (a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

(B) For purposes of subparagraph (A) if—

(i) any contributions are made on behalf of a participant with respect to any plan year, and

(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any rights to or derived from the contributions made with respect to such plan year.

(C) For purposes of this part, the term "class year plan" means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

* * * * * * *

BENEFIT ACCRUAL REQUIREMENTS

SEC. 204. (a) * * *

* * * * * * *

(e) For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

(1) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit.

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

[In the case of a defined contribution plan, the] *The* plan provision required under this subsection may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal.

* * * * * * *

(g)(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 302(c)(8) *or 4281.*

* * * * * * *

REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY

SEC. 205. (a) Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who [retires under the plan] *does not die before the annuity starting date,* the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b)(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 302, and

(C) any participant under any other individual account plan unless—

(i) such plan provides that the participant's nonforfeitable accrued benefit *(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)* is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection [(c)(2)(A),] *(c)(2),* to a designated beneficiary),

(ii) such participant does not elect the payment of benefits in the form of a life annuity, and

(iii) with respect to such participant, such plan is not a [transferee] *direct or indirect transferee (in a transfer after December 31, 1984)* of a plan which is described in subparagraph (A) or (B) or to which this clause applied with respect to the participant.

Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for assets and any income therefrom.

* * * * * * *

(c)(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, [and]

(B) the plan meets the requirements of paragraphs [(2) and (3).] *(2), (3), and (4), and*

(C) the plan provides that, if this section applies to the participant at the time a loan is made (or, if later, when it is proposed to secure such loan by part or all of the participant's accrued benefit), no portion of the participant's accrued benefit may be used as security for such loan unless the spouse of the participant (if any) consents in writing to such use.

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

[(A) the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or]

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

* * * * * * *

(3)(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2) and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B) Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35, *or if later, within a reasonable period after the individual becomes a participant,* (and consistent with such regulations as the Secretary of the Treasury may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(4) Each plan shall provide that, if ths section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

[(4)] *(5)*(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, *if such benefit may not be waived (or another beneficiary selected) and* if the plan fully subsidizes the costs of such benefit.

[(5)] *(6)* If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such act.

[(6)] *(7)* For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 90-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends of the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

* * * * * * *

(e) For purposes of this section—

(1) Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an indivdual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1), the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the [account balance of the participant as of the date of death] *portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable accrued benefit.*

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

* * * * * * *

(h) For purposes of this section—

(1) the term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 3(19)) to any portion of [the accrued benefit derived from employer contributions,] *such participant's accrued benefit,*

[(2) the term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability), and]

(2)(A) The term "annuity starting date" means—

(i) the first day of the first period for which an amount is to be received as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the day on which such benefit is to be paid.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

* * * * * * *

(j) If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4), nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) are met.

[(j)**]** *(l)* In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

SEC. 206. (a) * * *

* * * * * * *

(d)(1) * * *

* * * * * * *

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

* * * * * * *

(F) To the extent provided in any qualified domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 205 *(and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)*, and

(ii) if married for at least 1 year, the *surviving* former spouse shall be treated as meeting the requirements of section 205(f).

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and **[**any other**]** *each* alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

* * * * * * *

(H)(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator [shall segregate in a separate account in the plan or in an escrow account the amounts] which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within [18 months] *the 18-month period described in clause (v)* the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts ([plus] *including* any interest thereon) to the person or persons entitled thereto.

(iii) If within [18 months] *the 18-month period described in clause (v)*—

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts ([plus] *including* any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the [18-month period] *period described in clause (v)* shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

* * * * * * *

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 303(a) of the Consumer Credit Protection Act.

[(L)] *(N)* In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

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PART 4—FIDUCIARY RESPONSIBILITY

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EXEMPTIONS FROM PROHIBITED TRANSACTIONS

SEC. 408. (a) * * *

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(d) Section 407(b) and subsection [(a),] (b), (c), and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly—

(1) lends any part of the corpus or income of the plan to;

(2) pays any compensation for personal services rendered to the plan to; or

(3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1954), a member of the family (as defined in section 267(c)(4) of such Code) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982 and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of the Internal Revenue Code of 1954) and an employer or association of employers which establishes such an account or annuity under section 408(c) of such code shall be deemed to be an owner-employee.

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RETIREMENT EQUITY ACT OF 1984

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TITLE III—GENERAL PROVISIONS

* * * * * * *

SEC. 303. TRANSITIONAL RULES.

(a) AMENDMENTS RELATING TO VESTING RULES; BREAKS IN SERVICE; MATERNITY OR PATERNITY LEAVE.—* * *

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(c) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVORS ANNUITY.—

(1) * * *

* * * * * * *

(4) ELIMINATION OF DOUBLE DEATH BENEFITS.—

(A) IN GENERAL.—In the case of a participant described in paragraph (2), death benefits (other than a qualified joint and survivor annuity or a qualified preretirement survivor annuity) payable to any beneficiary shall be reduced by the amount payable to the surviving spouse of such participant by reason of paragraph (2). The reduction under the preceding sentence shall be made on the basis of the respective present values (as of the date of the participant's death) of such death benefits and the amount so payable to the surviving spouse.

(B) SPOUSE MAY WAIVE PROVISIONS OF PARAGRAPH (2).—In the case of any participant described in paragraph (2), the surviving spouse of such participant may waive the provisions of paragraph (2). Such waiver shall be made on or

before the close of the second plan year to which the amendments made by section 103 of this Act apply. Such a waiver shall not be treated as a transfer of property for purposes of chapter 12 of the Internal Revenue Code of 1954 and shall not be treated as an assignment or alienation for purposes of section 401(a)(13) of the Internal Revenue Code of 1954 or section 206(d) of the Employee Retirement Income Security Act of 1974.

* * * * * * *

(e) TREATMENT OF CERTAIN PARTICIPANTS WHO SEPARATE FROM SERVICE BEFORE DATE OF ENACTMENT.—

(1) * * *

(2) TREATMENT OF CERTAIN PARTICIPANTS WHO PERFORM SERVICE ON OR AFTER JANUARY 1, 1976.—If—

(A) a participant had at least 1 hour of service in [the first] *any* plan year beginning on or after January 1, 1976.

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ADDITIONAL VIEWS REGARDING MR. CHANDLER'S PROPOSED EXTENSION OF COMPLIANCE DATE FOR IRS NOTICE 86-3

Many Members of Congress are concerned about compliance problems for pension plans resulting from numerous recent changes in tax laws, particularly for small employers. I raise this issue in connection with the Retirement Equity Act Technical Correction legislation since recently issued IRS Notice 86-3 relates to the compliance dates for the Retirement Equity Act as well as for TEFRA and the Tax Reform Act of 1984. In addition to raising this issue here, I intend to address this matter by introducing legislation that would extend the date of compliance to September 15, 1986 for those employers out of compliance because of TEFRA, TRA, or REA. It would also make the compliance retroactive once those plan changes have been made.

It is important to simply make people aware that if the Congress is going to broaden the number of employees covered by retirement plans, we are going to have to find some way to allow plan administrators to qualify their plans without inordinate difficulty. This is especially true for small employers, who must be allowed to qualify their plans in a timely fashion, without having the laws changed every six months to a year. These changes create an incredible expense for employers, and are causing too many of them to simply terminate their plans rather than incur additional expense.

Any employer has the perfect right to terminate its pension plan whenever it finds the plan adds more demand than the employer can reasonably accomplish, but this is certainly not something that the Congress wants to encourage. We must step back and take a long range view of our retirement laws. In the meantime, the remedies included in my legislation will provide these employers a period of relief from the burdens that Congress has imposed upon them.

Rod Chandler.
James M. Jeffords.
Harris W. Fawell.

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